that it is uncertain whether such damages resulted necessarily and immediately from the breach complained of.

"The general rule is, that all damages resulting necessarily and immediately and directly from the breach are recoverable, and not those that are contingent and uncertain. The latter description embraces, as I think, such only as are not the certain result of the breach, and does not embrace such as are the certain result, but uncertain in amount."

Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that they cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise. *Eastman Co.* v. *Southern Photo Co.*, 273 U. S. 359, 379. Compare *The Seven Brothers*, 170 Fed. 126, 128; *Puc. etc. Co.* v. *Packers' Assn.* 138 Cal. 632, 638. As the Supreme Court of Michigan has forcefully declared, the risk of the uncertainty should be thrown upon the wrongdoer instead of upon the injured party. *Allison* v. *Chandler*, 11 Mich. 542, 550-556. That was a case sounding in tort, and at page 555 the court, speaking through Christiancy, J., said:

"But shall the injured party in an action of tort, which may happen to furnish no element of certainty, be allowed to recover no damages (or merely nominal), because he can not show the exact amount with certainty, though he is ready to show, to the satisfaction of the jury, that he has suffered large damages by the injury? Certainty, it is true, would thus be attained; but it would be the certainty of injustice.

. . . . . .

"Juries are allowed to act upon probable and inferential, as well as direct and positive proof. And when, from the nature of the case, the amount of the damages can not be estimated with certainty, or only a part of them can be so estimated, we can see no objection to placing before the jury all the facts and circumstances of the case, having any tendency to show damages, or their probable amount; so as to enable them to make the most intelligible and probable estimate which the nature of the case will permit."

And again in *Gilbert* v. *Kennedy*, 22 Mich. 117, 129 *et seq.*, also a tort action, the court, through the same eminent judge, pointed out that cases will often occur in which it is evident that large damages have resulted, but where no reliable data or element of certainty can be found by which to measure with accuracy the amount. Rejecting the view that in such cases the jury should give only nominal, that is, in effect, no damages, leaving the injured party without redress, the court said (p. 130):

"To deny the injured party the right to recover any actual damages in such cases, because they are of a nature which cannot be thus certainly measured, would be to enable parties to profit by, and speculate upon, their own wrongs, encourage violence and invite depredation. Such is not, and cannot be the law, though cases may be found where courts have laid down artificial and arbitrary rules which have produced such a result."

After pointing out that there could be no just principle requiring a higher degree of certainty in the evidence upon which the damages are to be estimated than in reference to other branches of the case, the court said that where from the nature of the case damages could not be measured with certainty by a fixed rule, the facts and circumstances tending to show the probable amount of such damages should be submitted to the jury to enable them to form

"such reasonable and probable estimate, as in the exercise of good sense and sound judgment they shall think will produce adequate compensation. There is no sound reason in such a case, as there may be, to some extent, in actions upon contract, for throwing *any part* of the loss upon the injured party, which the jury believe from the evidence he has sustained; though the precise amount cannot be ascertained by a fixed rule, but must be matter of opinion and probable estimate. And the adoption of any arbitrary rule in such a case, which will relieve the wrong-doer from any part of the damages, and throw the loss upon the injured party, would be little less than legalized robbery.

"Whatever of uncertainty there may be in this mode of estimating damages, is an uncertainty caused by the defendant's own wrongful act; and justice and sound public policy alike require that he should bear the risk of the uncertainty thus produced; . . . ."

As was said by Judge Anderson in his dissenting opinion below, there are many cases in which damages are allowed where the element of uncertainty is at least equal to that in the present case—as, for example, copyright and trade mark cases, cases of

unfair competition, and many cases of personal injury. See also *Straus* v. *Victor Talking Mach. Co.*, 297 Fed. 791, 802, a case very much like the present one, except that the plaintiffs were buyers and were compelled to pay higher prices for goods because of the unlawful acts of defendants, instead of being obliged, as here, to sell at lower prices. Numerous decisions are there cited in support of the statement, that "The constant tendency of the courts is to find some way in which damages can be awarded where a wrong has been done. Difficulty of ascertainment is no longer confused with right of recovery."

It is not easy to reconcile the decision in the present case with what was said by the same court in *Linen Thread Co.* v. *Shaw*, 9 F. (2d) 17, 19, namely, that "The rule that damages, if uncertain, cannot be recovered, applies to their nature, and not to their extent. If the damage is certain, the fact that its extent is uncertain does not prevent a recovery."

Disposing of the second item of damages, the court below, after referring to evidence tending to show that petitioner was not in a thriving financial condition, said that petitioner was without capital to meet the situation which it faced, even if there had been no conspiracy and there had been open competition; and that its failure was inevitable either from lack of capital or inefficient management or both. The court, therefore, concluded that petitioner had not sustained the burden of proving that the depreciation in value of its plant was due in any measurable degree to any violation of the Sherman Act by the respondents. But this conclusion rested upon inferences from facts within the exclusive province of the jury, and which could not be drawn by the court contrary to the verdict of the jury without usurping the functions of that fact finding body. Whether the unlawful acts of respondents or conditions apart from them constituted the proximate cause of the depreciation in value, was a question, upon the evidence in this record, for the jury "to be determined as a fact, in view of the circumstances of fact attending it." *Milwaukee, etc. Railway Co.* v. *Kellogg*, 94 U. S. 469, 474. And the finding of the jury upon that question must be allowed to stand unless all reasonable men, exercising an unprejudiced judgment, would draw an opposite conclusion from the facts. *Missouri, K. & T. Ry. Co.* v. *Byrne*, 100 Fed. 359, 363; *Travelers' Ins. Co.* v. *Melick*, 65 Fed. 178, 181; *Chicago G. W. Ry. Co.* v. *Price*, 97 Fed. 423, 429.

It would be going far here to say that this qualifying exception has been met.

There was evidence to the effect that petitioner's plant had cost $235,000, of which $90,000 had been used to purchase and install a parchmentizing machine. After petitioner had been compelled to close its business, as a result, we must now assume, of the unlawful acts of the respondents, this property for the purpose of that business was abandoned. That some depreciation in the value of the plant must have resulted is obvious. The treasurer of petitioner estimated the market value of the plant after it had been closed down at $75,000. If this estimate be accepted, the depreciation was far more than the entire amount of the verdict, which included both items of damages. It is true that the treasurer was an interested witness and that he was not an expert; and the court in its charge expressly directed the attention of the jury to those facts. But it was for the jury to determine the weight of the evidence, the credit to be given the witness, and the extent to which his testimony should be acted upon. That there was actual damage due to depreciation in value was not a matter of speculation, but a fact which could not be gainsaid. The amount alone was in doubt; and, in the light of the foregoing discussion as to the first item of damages, the proof is sufficiently certain and definite to support the verdict of the jury in that respect.

Other assignments of error made on the appeal from the district court were not considered by the court below. No argument in support of these assignments has been submitted here, and respondents assume that they will be remitted for the consideration of the court below if the judgment of that court be reversed. The entire record, however, is before this court with power to review the action of the court of appeals and direct such disposition of the case as that court might have made of it upon the appeal from the district court. *Lutcher & Moore Lumber Co.* v. *Knight*, 217 U. S. 257, 267; *Delk* v. *St. Louis & San Francisco R. R.*, 220 U. S. 580, 588. And see *Langnes* v. *Green*, *supra*. Accordingly, we have examined these assignments, some eight in number. One or more of them involve questions which have been disposed of by the foregoing opinion. We find nothing in any of the others of sufficient substance or materiality to call for consideration.

The judgment of the court of appeals is reversed and that of the district court affirmed.